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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/073,821	02/11/2002	Philip Molfese	10121/4	6367

757 7590 08/12/2003

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EXAMINER

JIANG, CHEN WEN

ART UNIT PAPER NUMBER

3744

DATE MAILED: 08/12/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/073,821

Applicant(s)

MOLFESE, PHILIP

Examiner

Chen-Wen Jiang

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 19 June 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-55 is/are pending in the application.
- 4a) Of the above claim(s) 1-14 and 27-55 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 15-20 and 26 is/are rejected.
- 7) ☒ Claim(s) 21-25 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant's election with traverse of Group I-C in Paper No. 8 is acknowledged. The traversal is on the ground(s) that the invention must be independent and there must be a burden on the examiner. This is not found persuasive because each group is distinct invention and the reasons of restriction are provided in the paragraph 2 (process and apparatus), 3(combination and subcombination) and 6(species).

The requirement is still deemed proper and is therefore made FINAL.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 15,16,17,19,20 and 26 are rejected under 35 U.S.C. 102(b) as being anticipated by Christensen (U.S. Patent Number 2,028,825).

Christensen discloses a service container as shown in Figs.1-5. The container comprises an outer casing (housing) 2b, an inner casing (block) 2a, storage spacing for container 9 exists between the inner and outer casings. The inner casing and the containers constitute a unit, and this unit is rotatably mounted within the outer casing. The inner casing and the fins are built up from a series of sheet metal strips.

In regard to claim 26, an access opening 11 and a hinged door 24 are disclosed.

In regard to claim 19, cavity is formed as compartment 10.

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4. Claims 15 and 26 are rejected under 35 U.S.C. 102(b) as being anticipated by Zittel (U.S. Patent Number 5,327,817).

Zittel discloses food machinery as shown in Fig.1. The machinery comprises a tank 22, a cooler 20 is rotatably mounted within the tank 22. Food product is introduced into the inlet opening 51 of the cylinder, and discharged through the discharge opening 53 of the cylinder. The food product 36 may be contained in pouches 54 which may have a capacity up to two gallons. An axially agitating auger 26 is longitudinally mounted within the tank 22.

5. Claim 15 is rejected under 35 U.S.C. 102(b) as being anticipated by Micallef (U.S. Patent Number 4,825,665).

Micallef discloses a cooling beverage device. Referring to Fig.1, the apparatus comprises a housing 12 includes a column 14 and a platform 13, a cylindrical drum 10 (block) mounted on a turnable 11, fins 21 provided on the inner surface of the drum 10 and a beverage container holding arrangement.

### *Claim Rejections - 35 USC § 103*

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 16-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Micallef (U.S. Patent Number 4,825,665) or Christensen (U.S. Patent Number 2,028,825).

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The applicant should note that the selection of known material based upon its suitability for the intended use is a design consideration within the skill of the art. In re Leshin, 227 F.2d 197, 125 USPQ 416 (CCPA 1960).

*Allowable Subject Matter*

8. Claims 21-25 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Chen-Wen Jiang whose telephone number is (703) 308-0275. The examiner can normally be reached on Monday-Thursday from 6:30 to 4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Timothy Maust can be reached on (703) 308-3390. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9302 for regular communications and (703) 872-9303 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 306-5648.

Chen-Wen Jiang  
Primary Examiner  
July 31, 2003

